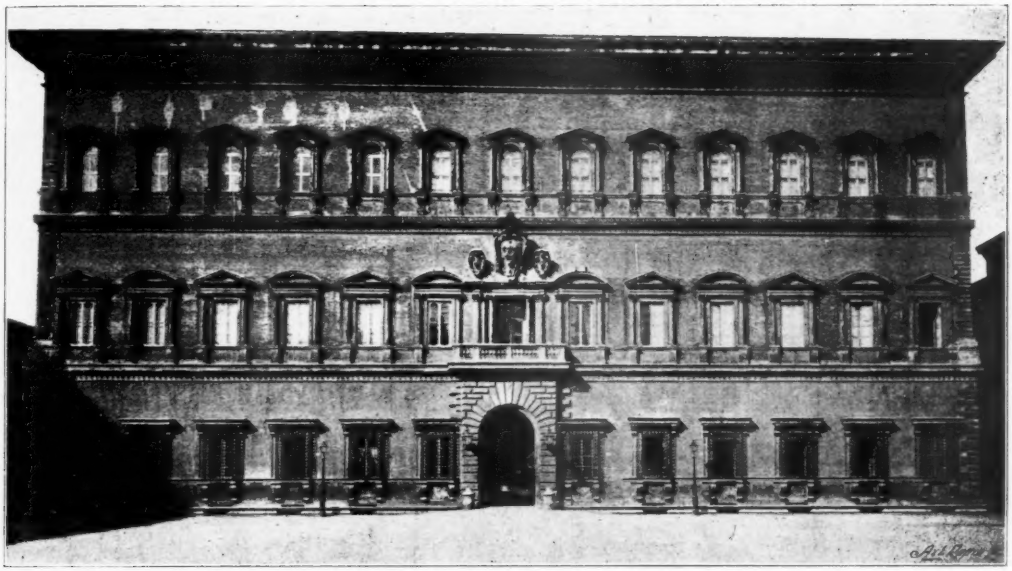


Palazzo Farnese, Rome, by Antonio da San Gallo the Younger. The Cornice by Michelangelo

ST. PETER'S, ROME.

THE FOURTH ROYAL ACADEMY LECTURE, SESSION 1901.*

By Professor Aitchison, R.A., *Past President, Royal Gold Medallist.*

BRAMANTE DA URBINO, as Vasari calls him, was taken ill in November 1513, and died on the 11th March 1514; he was buried in St. Peter's. He is said to have been a musical composer as well as an architect. During his illness Giuliano da San Gallo (1445–1516) and Fra Giocondo of Verona (1435–1515) were given him as assistants. After Bramante's death Raffael, who according to J. A. Symonds was Bramante's nephew, was appointed chief architect (1st August 1514) on the recommendation of Bramante, with Giuliano da San Gallo as his second. Giuliano da San Gallo retired on the 1st July 1515, and Fra Giocondo died the same day.

Giuliano Giamberti, nicknamed by Lorenzo dei Medici "Da San Gallo," was the son of an old architect, Francesco di Paolo Giamberti, though in legal documents he is called Francesco di Bartolo di Stefano, who was employed by Cosimo dei Medici. Giuliano and his brother Antonio were apprenticed to Francione, a joiner and wood-carver who was skilled in perspective. Giuliano was accounted the best inlayer of his day, and was sent by Lorenzo dei Medici to repair his castle at Castellana, and so increased in reputation as an architect that he made a model for Lorenzo dei Medici of a palace to be built in Naples for the Duke of Calabria. This model he was unable to finish, but it was finished for him by his brother Antonio. The elder Lorenzo sent Giuliano with the model to the Duke, who was so well pleased with it that he had it begun at once. When Giuliano got permission to return to Florence the Duke made him many valuable presents, among them a silver goblet full of gold ducats. Giuliano would not accept these presents, "saying that he had a master who had no need of gold and

* The Third Lecture appeared in Journal No. 11, 6th April 1901.

silver, but hoped the Duke would present him with some of his antiquities"; and the Duke gave him a head of Hadrian, a colossal female figure, and a Sleeping Cupid, which Giuliano sent to Lorenzo. Such acts of self-denial and high-mindedness were not likely to be overlooked, for it must be recollected that the great men of that day were judges of the fine arts, and highly valued antiquities. Giuliano had been previously employed by the Castellan of Ostia, Bishop of Rovere, afterwards Pope Julius II., to repair his fortresses about 1490, and this prevented him from completing the model himself for the Duke of Calabria. When the new St. Peter's was entrusted to Bramante, Giuliano felt much aggrieved, and prepared a plan of his own in the form of a Latin cross [fig. 1], a very inferior plan to Bramante's. Giuliano appears to have had a great reputation as a military engineer, and when Pisa was besieged he designed the bridge of boats which cut off its supplies by sea and caused its ultimate surrender. One of Giuliano's constructional achievements was to build a coved ceiling for a great hall of Lorenzo's, a work that was thought impossible to be done. Bramante got much credit for an innovation of casting great modelled masses for vaults and ceilings, so that they could be put up whole. The front of his house, that was afterwards Raffael's, is said to have been executed in this way. I think C. Cesariano mentions this in his *Annotations of Vitruvius*, p. 99, when he speaks of sculptured panels cast in gypsum from moulds.

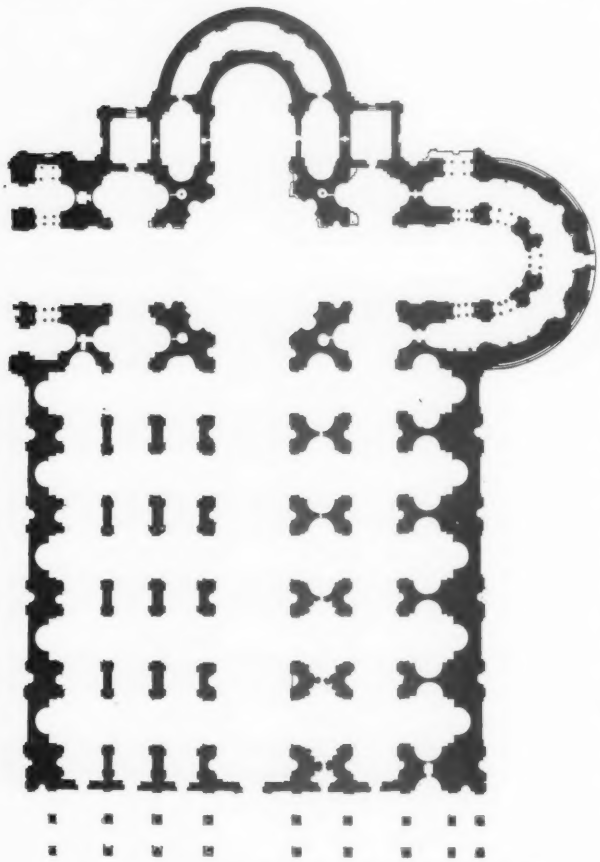


FIG. 1.—PLAN OF GIULIANO DA SAN GALLO'S DESIGN FOR ST. PETER'S.

That illustrious man Fra Giocondo was architect to the Emperor of Germany, to the King of France, and to the Republic of Venice. He had the Renaissance passion for the fine arts, and was said to have been several times whipped by order of the Prior of his monastery for being absent while he was sketching and measuring antiquities; but as this had no effect on him, the Prior acknowledged that it was a gift from Heaven, and let him be. He is said to have been a philosopher, a theologian, and an excellent Grecian, and, if Vasari has made no mistake, was one of the great inlayers of wood with buildings in perspective. The French Grecian Buddæus was one of his intimates at Rome, and he is said to have taught Greek to that great Italian, Julius Cæsar Scaliger. The first thing that Vasari mentions about Giocondo is the securing of the piers of the "stone bridge" at Verona for the Emperor

Maximilian. He built two bridges over the Seine for Louis XII. of France; one of them was the bridge of Notre-Dame admired by Scamozzi. Vasari tells us that parts of St. Peter's were giving evidence of weakness and decay from having been hastily erected, and that by the advice of Fra Giocondo, Raffael, and Giuliano da San Gallo the foundations were in a great measure renewed. They were underpinned in the following manner: They caused cavities of large size to be dug beneath in the manner of wells, but square, and these they filled with masonry, and between each of these piers they turned very strong arches, which supplied a new foundation. When at Venice Fra Giocondo observed that the mud from the Brenta was filling up the lagoon, and if this were to take place Venice would become uninhabitable; and he was empowered by the Signoriá to make a cut to turn half the water of the Brenta out by Chioggia, so as to prevent its mud from filling up the lagoon. After this time the bridge of the Rialto was burnt, and Fra Giocondo was to have had the rebuilding; he is said to have made a noble design for it and for laying out the surrounding parts, but his design not being carried out he left Venice in disgust. He is believed to have built the Palazzo dei Signori at Verona [fig. 5], whose windows the late Dr. Middleton said were copies of a Roman doorway of the time of Gallienus (260–268 A.D.), found in the walls of Verona. Fra Giocondo is supposed to be represented on a plinth of the first pilaster to the right of the first floor, with Pliny the Younger's Epistles, which he discovered in France; but he is best known to architects by his Latin illustrated editions of Vitruvius, the first published in large octavo in Venice in 1511, the second in small octavo (1513) at Florence, by Giunta, with Frontinus de Aqueductibus—this was the pocket Vitruvius of Rondelet *—and a third edition with Frontinus, in small octavo, by the

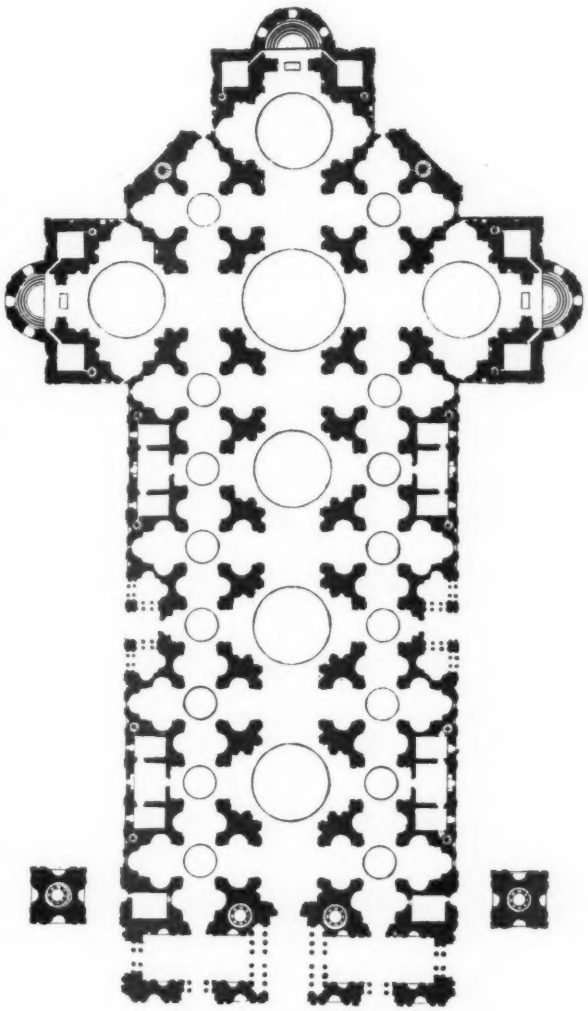


FIG. 2.—PLAN OF FRA GIOCONDO'S DESIGN FOR ST. PETER'S.

* Presented to me by M. Ch. Lucas and shown in Sir Lawrence Alma-Tadema's portrait in my hand.—G. A.

heirs of Giunta, Florence 1822. Baron H. de Geymüller, whom we have to thank for discovering a hundred of Fra Giocondo's drawings in various libraries, speaks of the beauty of his sketches and of his enthusiasm in measuring and sketching buildings when he was close upon eighty years old; he gives (plate 37) Fra Giocondo's plan [fig. 2]. The late Edward Falkener, in his *Museum of Classical Antiquities*, London 1860, gives us Fra Giocondo's lament over the destruction of antiquities at Rome.

Raffaello Sanzio da Urbino (6th April 1483—6th April 1520) had, if he lived to be as old as Bramante, thirty-three years before him, and Bramante must have thought he would have the dome of St. Peter's to build, so he must have seen in Raffael a rare insight into construction to have recommended him to Leo X. "as not less excellent in the way of building than he was in the art of painting," for we should have been inclined to pay him the compliment that Iago paid to Cassio—

> "That never set a squadron in the field,
> Nor the division of a battle knows
> More than a spinster."

Bramante probably loved Raffael, and if Raffael were his nephew we might say naturally, for they were both urbane men who loved magnificence, as well as being men of genius who came from the same part of Italy. Bramante had brought Raffael to Rome and got him employed on the painting of the stanze and loggias; he had given him lessons in architecture, and knew that he was full of invention, that all he did was graceful, and that there were two of the most experienced architects in Italy given him to consult with, Giuliano da San Gallo and Fra Giocondo, to keep him right in the constructive parts. Raffael was appointed architect-in-chief on the 1st August 1514, and for the six or seven years he lived after this appointment he was paid 300 gold crowns a year. The question naturally occurs to us, what did he do for this salary? We know he made a sketch of the inside of the Pantheon, and produced a plan for the building of St. Peter's in the form of a Latin cross [fig. 3], which Serlio admired. We know that he was an excellent perspective draughtsman, as shown in his pictures, although Bramante is said to have designed for him the architecture of the school at Athens; and when he had learnt some Roman details we can quite believe that he could make designs for churches and palaces, for no one will deny that he had great invention, and an incomparable feeling for grace; but this is very far from giving him the knowledge wanted even for turning a barrel vault over the nave of St. Peter's, much less for building its enormous dome. We must, however, recollect that Bramante must have left a model or drawing of the dome for Serlio to have got it from Peruzzi.

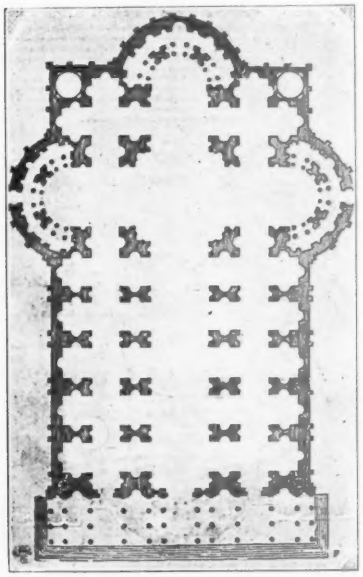


FIG. 3.—PLAN OF RAFFAEL'S DESIGN FOR ST. PETER'S.

The date of Martin Heemskirk's sketches of the state of the works at St. Peter's is placed by Baron de Geymüller between 1520, when Raffael died, and 1536, when Baldassare Peruzzi died. In those sketches there is no sign of any vaulting beyond what Bramante left, but there is the base and pedestal of one of the fluted pilasters. We know that Raffael

applied for an assistant, which seems to show that he had more work than he could personally do, and was given Antonio da San Gallo the younger as second architect on the 22nd November 1516. Before that Antonio had only been a carpenter on the works or Bramante's draughtsman. The church of St. Elogio or San Elo dei Orefici at Rome, by the river, is said to be by Raffael on the strength of a drawing upon which Salustio Peruzzi has written, "The work of Raffael da Urbino." Vasari says Raffael made a design for the Pandolfini Palace at Florence [fig. 6] for the Bishop of Troy, said to have been carried out by Aristotile da San Gallo. Baron de Geymüller contends that the Farnesina was by Raffael and not by B. Peruzzi. Vasari says Peruzzi gave the model of Agostino Ghigi's palace in Rome, but its architecture neither resembles Raffael's nor Peruzzi's, though the stables that the Baron has restored remind one of Raffael. Several other palaces are attributed to Raffael, and the Chigi Chapel in Santa Maria del Popolo at Rome. He gave the sketches for the Villa Madama at Rome; the part executed is said to have been done by Giulio Romano; there is a coloured model of it at the Victoria and Albert Museum. Raffael got a chill, and after fifteen days' illness died on the 6th April 1520; his epitaph in Latin was written by Cardinal Bembo, and he was buried in the Pantheon.

It is said of Baldassare Peruzzi (7th March 1481 – 4th January 1536) that his birthplace was as much disputed as that of Homer, for Florence, Volterra, and Siena contend for the honour of his birth. Amongst his contemporaries he is always called B. Peruzzi of Siena. He showed a taste for the arts, and was always found in his youth among goldsmiths and designers, and shortly after his father's death he gave his whole attention to painting. He aided his mother and sister by copying pictures and painting small ones of his own. He is said to have painted one in a chapel at Volterra, where he made the acquaintance of one Peter, who worked for Pope Alexander VI., and on his going to Rome he got employment at the beautiful Appartamento Borgia, and he appears to have painted some of the corridors at the Vatican. There is a small fully-coloured model of one of the sumptuous rooms of the Appartamento Borgia in the Victoria and Albert Museum. The exact date at which he came on as Bramante's draughtsman is not known to me, but Geymüller gives some plates of his drawings for Bramante. I think it is evident from his position at St. Peter's as Bramante's assistant that Sebastian Serlio, who was his pupil, got Bramante's plan and section of the dome and Raffael's proposed plan. Peruzzi made a plan of his own for St. Peter's, which Serlio also gives in his work [fig. 4]. Baron de Geymüller is of opinion that it was merely a slight variation of one of Bramante's; this may be so, but it was made, I imagine, when Bramante's first scheme was found to be too expensive. It is not easy to know exactly how Peruzzi stood in regard to the edifice after Bramante's death, whether he was still assistant architect during Raffael's time or in what position he at first stood in relation to Antonio da

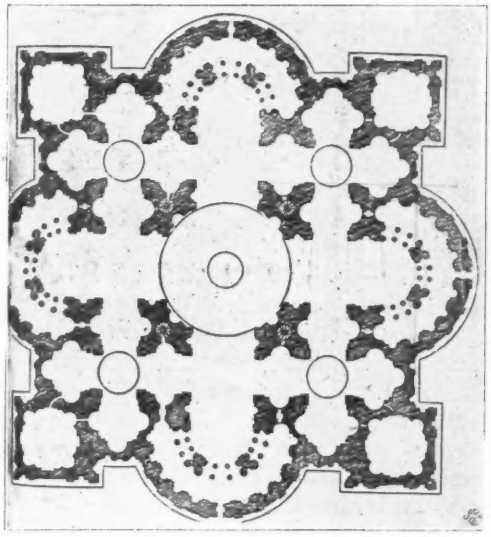


FIG. 4.—PLAN OF B. PERUZZI'S DESIGN FOR ST. PETER'S.

San Gallo the younger. Raffael died 6th April 1520, and on the 1st August after Raffael's death Peruzzi was formally elected architect to St. Peter's, with a salary of 150 ducats a year, and he continued in this office till May 1527, when the sack of Rome took place. He again appears in the same office from 1530 to 1531, and then had a salary of twenty-five ducats a month from March 1535 till his death in January 1536. He became a famous military engineer; is generally credited with being the architect of the Farnesina Palace at Rome; at any rate, Vasari says he made a model of it in 1509–1510, but Geymüller considers that this was the work of Raffael. It is not much like Peruzzi's other work nor Raffael's. Many churches, palaces, and other buildings in various parts of Italy are attributed to him, but the two about which I never heard any dispute are the twin palaces of the Massimi, near the Piazza Navona in Rome, which were unfinished at his death, but neither Vasari, Serlio, nor Haudebourt (1828) says who finished them. Perino dell' Vaga seems to have done some of the internal stucco work. To the best of my belief I never saw but one cabinet picture of Peruzzi's, the Adoration of the Magi, and the three Magi are said to be portraits of Titian, Raffael, and Michelangelo. It is a panel picture in oil, said to be copied from a drawing of Peruzzi by Girolamo da Trevigi, and the copy made from it by Bartolomeo Cesi is in our National Gallery. A great deal of the information contained in Serlio's book, *Libro d' Architettura de M. Sebastiano Serlio Bolognese*, published in Venice in 1544 to 1551, in five books, is supposed to be due to the manuscripts, measurements, and annotated Vitruvius of Peruzzi.

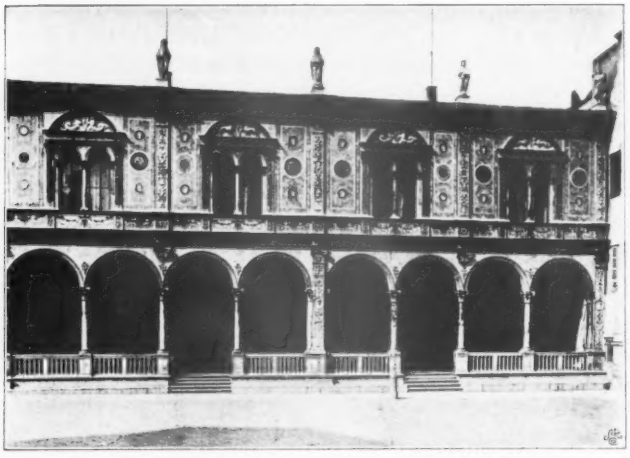


FIG. 5.—PALAZZO DEL CONSIGLIO, VERONA. BY FRA GIOCONDO.

As Peruzzi appears to have been engaged on St. Peter's when Rome was taken by Constable de Bourbon in 1527 and sacked by his men, he was captured by some of the Bourbon's brigands, and from his dignified appearance and manner was taken for some high ecclesiastic, and was tortured to extort a good ransom; but when it was found that he was only a painter, they made him paint a portrait of the Bourbon from his dead body. When Peruzzi got clear of them, his friends seem to have refurnished him and lent him money to go to Siena, but in passing over the mountains he was again attacked by brigands and stripped of all that he possessed, even to his clothes, so that he came to Siena with nothing on but his shirt. After the Bourbon's brigands had left Rome, Peruzzi appears to have come back to St. Peter's, and there is a memorandum of his being paid 150 scudi per annum for acting as architect. Paul III. sent him 100 scudi in his last illness, and he was buried in the Pantheon.

Vasari says he designed the organ case at the Carmino, Siena. There is a beautiful organ case said to be designed by him at Sta. Maria della Scala, Siena, in Hill's *Organ Cases*. That Peruzzi was a very accomplished architect and very versatile there can be no doubt, as Vasari says that many parts of his houses were pulled down, and that he made the designs for San Petronio at Bologna, one Gothic and one modern. The Palace Albergati is also

attributed to Peruzzi. But unless we can meet with some Englishman who has the knowledge, perseverance, and energy of Baron H. de Geymüller, most of the Renaissance architects will not get their due.

B. Peruzzi was one of the most modest and retiring of men; doubtless he was actuated by that desire of fame which Milton so beautifully expresses:—

> "Fame is no plant that grows on mortal soil,
> Nor in the glistering foil
> Set off to the world, nor in broad rumour lies:
> But lives and spreads aloft by those pure eyes,
> And perfect witness of all-judging Jove;
> As he pronounces lastly on each deed,
> Of so much fame in Heaven expect thy meed."

Antonio da San Gallo (the Younger) (1485–1546) was the nephew of Giuliano and Antonio Giamberti. Vasari says he was the son of Bartolomeo Picconi of Mugello, a cooper, but his name has been found by Geymüller to have been Coroliani. He learnt the art of carpentry in his childhood, and I must here say that the carpenters of those days were like those mentioned in the Bible who carved wooden statues, and the Renaissance carpenters also inlaid woodwork in patterns. He went to his uncles Giuliano and Antonio the Elder at Rome to study architecture in 1503, when he was eighteen, and Giuliano having to go back to Florence for his malady, young Antonio became acquainted with Bramante, who had the palsy, and was taken on by him as a draughtsman, and in 1512 Bramante put in his hands the corridor that went to the Castle of St. Angelo. After Bramante's death and the appointment of Raffael, Antonio was employed at St. Peter's as a carpenter. Raffael asked for an assistant, and on the 22nd January 1517 was given Antonio; this later date is probably the ratification of the one above given. Of course Antonio had become known to Popes and Cardinals; he began the Farnese palace [see headpiece, p. 453], and when Cardinal Farnese became Pope as Paul III., 13th October 1534, Antonio altered it to make it worthy of a Pope. It consisted of at least two palaces, and was carried on bit by bit as the Cardinal could afford, but was left unfinished at Antonio's death. The top story is reputed to be Michelangelo's, but it may be by Vignola or Melighino; it is evidently not by Antonio. Michelangelo also suggested the great cornice, which it is said he got Vignola to profile.

Antonio da San Gallo the Younger left a model of his own scheme for St. Peter's (made by Labacco, and costing 4,184 scudi; it is now in the model room at St. Peter's), by which he proposed to make the basilica into a Latin cross by adding a narthex and making an open-air entrance beside to the nave. The four bell-towers which were to have stood over the sacristies were done away with, but two were carried up at the ends of the narthex, whose steeples are as high as the lantern of the dome, and the three apses of the choir and transept had aisles. Wren seems to have adopted Antonio's crowning of the ribs of the bell-towers for his spire to Bow church.

I may here draw attention to the recurrence to a Latin type by previous architects, Fra Giocondo, Giuliano da San Gallo, and Raffael, who either preferred the Latin cross or were prevailed upon to adopt it by the conclave of Cardinals, or by their own particular ecclesiastical patron. Antonio had also adopted a dome of solid masonry, a dome like Bramante's, instead of the double dome of Brunelleschi imitated by Michelangelo. The masonry of Antonio's dome appears to be about 17 feet thick, while at the bottom of the drum it was 42 feet, and he appears to have one or two spiral staircases in the thickness of its masonry to go up to the lantern; but how a practical man could have supposed that the piers he had would support so enormous a weight is not evident, unless the existing piers were to be pulled down and replaced with solid porphyry. This design of

Antonio da San Gallo was made before Michelangelo had anything to do with St. Peter's, but he had seen the model, and when someone said "This design gives a fine field," Michelangelo said, "Ay, verily, for animals and horned cattle, who know nothing of architecture!" In my opinion the best design for the front is one given in Geymüller's book (plate 41), but whose design it is I am unable to say, and its only identification by the Baron is that the writing on the back of the drawing is Antonio's. This is often called Raffael's design. Geymüller, however, believes it to be by Perino del Vaga; but if not Perino del Vaga's drawing the central part looks as if suggested by it. This central part contains a majestic archway with two arches

FIG. 6.—PALAZZO PANDOLFINI AT FLORENCE. DESIGNED BY RAFFAEL, CARRIED OUT BY ARISTOTILE DA SAN GALLO.

about half the height on either side, and then come the bell-towers. In my opinion the bell-towers are too wide, being only a third less in width than the centre portion; and being very elaborately enriched with architectural features they draw attention away from the centre as well as rather overpower it by their magnitude; but the large archways really speak of immense crowds entering and coming out of the building. All the other designs, except Bramante's on the medal, conceal the entrance by columns or porticoes, and in Bramante's engraved design the doorway looks like one of the ordinary size for a church, and the side doors are hidden by columns forming porticoes; the apse is finished by a drum and, I suppose, a semi-dome with a large lantern, and what I suppose to be the nave is gabled; from the elevation the top of the lantern is only just below the string of the main dome, below the peristyle.

To return to Antonio's other works, he fortified Civita Vecchia, he finished the little church of Sta. Maria da Loreto near the Column of Trajan, begun in 1507, built the Baldassini Palace, to which Perino del Vaga added a painted chamber, built another palace close by the tower of Nona, also the tower of the Centelli, and shortly afterwards he went to Gradoli and made there a beautiful palace for Cardinal Farnese; he restored the Rôcca of Capo di Monte and designed the fortress of Capraruola, he erected a tomb for Cardinal Alborense in San Jacopo degli Spagnuoli; shortly afterwards he built a palace in the square of Amelia for Bartolomeo Ferratino and a house for Cardinal Sante Prassade by the statue of Pasquin at Rome. Antonio then got the place of his uncle Giuliano at St. Peter's; there were more fortifications then made at Civita Vecchia, and Antonio's scheme, being thought the best, was chosen. He filled up the holes left by Raffael in the walls of stanze of the Vatican, and shored up the parts that were threatening to fall; twelve thousand crowns were spent in making a foundation in the Tiber for the Church of the Florentines in the Strada Giulia; he then restored the fortress of Monte Fiascone, and on the island of Visentina in the lake of Bolsena he built two little temples, one octagonal and one round, and he built the palace of the Bishop of Cervia. Under Clement VII. he made a courtyard before the loggias of the Vatican. He refronted the Mint and finished the Loggia, he fortified Parma and Piacenza with the assistance of his pupil Labbacco and San Michele, the Roman architect; he built the Pope additional rooms at the Vatican, and he restored Sta. Maria da Loreto which had split; he made the celebrated well at Orvieto with the two winding staircases, he repaired the fortress of Ancona and built one at Florence. He put bastions to the walls of Rome and built the gate of Santo Spirito, he fortified Perugia and built the fortress of Ascoli. Antonio, in Raffael's time, wrote a memorial to the Pope about the way the work was carried on at St. Peter's and the money wasted, and he raised the floor of St. Peter's about ten feet.

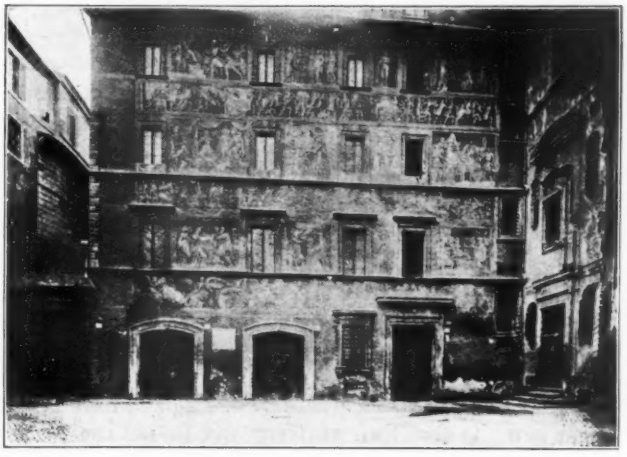


FIG. 7.—A COURTYARD, MASSIMI PALACE, PAINTED BY B. PERUZZI.

FIG. 8.—PALAZZO MASSIMI DELLE COLONNE, ROME. BY B. PERUZZI.

Vasari says (p. 468, vol. 5 of Milanesi's edition, Florence 1880), "Antonio enlarged and increased the strength of the piers in the basilica of St. Peter's, so that the weight of the dome might rest safely upon them, he also filled in the scattered parts of the foundations with solid material, and this rendered the whole so strong that there is now no fear of the fabric showing further cracks, nor of its threatening ruin, as was the case in the time of Bramante; and if this masterpiece were upon the earth instead of being hidden beneath it, the work would cause the boldest genius to stand amazed, for which cause the fame and name of this admirable artificer must ever retain a place among the rarest intellects." Antonio was sent to Narni and Terni to prevent the floods from the Lake of Marmora by making a new outlet, an old standing grievance ever since Roman times; during the great heat he got fever and died in 1546, and his body was brought to Rome with great pomp. He was buried in St. Peter's, and had a eulogistic Latin epitaph. In 1526, after one of his returns to Florence, he fell in love with a beautiful young girl, Isabella Dati or Deti, of low birth, whom he saw in the streets there, and, in spite of the remonstrances of his family, married her, but was worn out by her pride and extravagance. He left two children by her, Horace and Giulia. I have always wondered how King Cophetua got on with the beggar-maid after he married her.

Now that the young architects of England have become good draughtsmen and sketchers it seems a pity that their acquirements are not used. No one in England, as far as I know, has attempted to collect the works of the early Italian Renaissance architects, and it would be a great benefit to all students of architecture if someone would measure them and give us figured cuts of them: the students now have to depend on Letarouilly, with all the figures in the ridiculous metre. I do not mean that one man should give the works of all, but should take the works of one good architect and properly and completely illustrate them. France does this for the works of every modern French architect—they are published with a well-printed text and excellent steel engravings. Baron Henry de Geymüller has verified Bramante's works in the most complete way, and I would point to his work as a model to anyone who undertakes such a task. For he has not only personally seen every work that is known to be Bramante's, but, when written evidence has been wanting, he has sought proofs of the works being his by a careful examination of the various collections of drawings that exist in the great libraries and in the private collections of Europe.

England is shamefully behind the rest of the civilised world in the encouragement of the study of the great architectural works of the Romans; we have only Taylor and Cresy's Antiquities of Rome with coarse lithographed illustrations; of the Renaissance we have only Alberti's, Serlio's,* Palladio's, and Scamozzi's. The great Earl of Burlington, after a prolonged search, found all Palladio's drawings of the Roman baths save one at Daniel Barbaro's palace; he had them engraved and published in 1730, and, I believe, encouraged Leoni to publish illustrated editions of Leon Batista Alberti's works and those of Palladio; but there has been little done since by Englishmen to illustrate the works of the great Renaissance masters, and of our own architects' works scarcely anything. An exception must be made in the case of Inigo Jones's works, that were published by Kent in 1727, and the *Vitruvius Britannicus*, the last volume of which was published by Colin Campbell in 1725. Gibbs published by subscription his book in 1728, in which his Church of St. Martin-in-the-Fields is given. The Dean and Chapter of St. Paul's has in its possession the whole of Wren's drawings for that building, but has never published them, and the only engraving I know of is

* The first Booke of Architecture, made by Sebastian Serly, entreating of Geometrie. *Translated out of Italian into Dutch, and out of Dutch into English.* London: printed for Robert Peake, and are to be sold at his shop neere Holborne conduit, next to the Sunne Tauerne. Anno Dom. 1611.

a section through the dome by Gwynn; and although Sir William Chambers published a book on architecture in 1759, his great work of Somerset House and the many mansions that he built are not illustrated; I may mention the beautiful summer-house in the grounds of Castle Howard. Soane published some of his own designs, but I think his great work, the Bank of England, is only published to a minute scale by Britton and Pugin. There are no proper illustrations of Sir Charles Barry's works, not even of the Houses of Parliament, the drawings of which the Government annexed without payment, but has never had the patriotism to have published; nor are the works of Wilkins, of Cockerell, of Elmes published, and the remainder of the executed works of Soane. The only honourable exception to this scandal is the Dilettante Society, to whose patriotism and taste we owe the various superbly illustrated works on Greek architecture. For Arab architecture we have to go to France, although we have the Moresque work of the Alhambra by Owen Jones, and for Santa Sophia and the other Byzantine churches of Constantinople we have to go to the German Salzenberg.

9, CONDUIT STREET, LONDON, W., 31*st Aug.* 1901.

CHRONICLE.

Visit to Glasgow and Annual Dinner.

The Annual Dinner of the Royal Institute has been fixed to take place on Thursday the 3rd October at the Windsor Hotel, Glasgow, at 6.30 for 7 P.M. Tickets for the dinner can be obtained from the Secretary R.I.B.A. up to the 7th September, the latest date for receiving applications. The price is 21*s.* for members and 25*s.* for their guests. These charges are inclusive of wines and cigar. Tickets will be sent immediately on receipt of cheque. A most satisfactory response has been made to the circular sent out in June, and the visit promises to be in every way successful. On Friday the 4th October an informal visit will be paid to the Exhibition, and the Glasgow Institute will entertain the Royal Institute and other guests to luncheon at the Grosvenor Restaurant at one o'clock. On the afternoon of the same day, by invitation of the Principal and Senate, a visit will be paid to the University, and in the evening the Lord Provost and Magistrates will hold a Conversazione in the City Chambers in honour of the Royal Institute.

Building By-laws in Rural Districts.

The Institute has received from the Local Government Board copies of the series of "Model By-laws as to New Buildings and certain matters in connection with Buildings in Rural Districts" recently drawn up by the Board. Copies may be obtained, either directly or through any bookseller, from Messrs. Eyre & Spottiswoode, East Harding Street, E.C., price sixpence. All Rural District Councils who propose to make by-laws relating to new buildings are supplied with copies.

The New Government Offices in Parliament Street.

Several letters have appeared in the *Times* deprecating the intention of the Government to entrust to the Office of Works, assisted by the late Mr. Brydon's chief draughtsman, the carrying out of Mr. Brydon's designs for the Parliament Street Buildings. Mr. Arthur W. Soames, M.P., writes: "The character of Mr. Brydon's design is such that its effect when completed will depend, far more than it is easy for the public to realise, upon the proportions of the cornices and mouldings, and the design of windows, doorways, and innumerable other minor parts of the building. Mr. Brydon was unable to complete the drawings for these details, and if, therefore, this important mass of buildings is to be carried out in a manner creditable to the country it is of the utmost importance that an architect of the first ability should be appointed to complete the designs of one who had been selected with much care from among the foremost members of his profession" (*Times*, 3rd August).

As regards the "considerable saving" in the architect's fees which the First Commissioner of Works is hopeful of effecting, Lord Balcarres points out that "ample provision was made by the Treasury for the architect's fees; £26,000 was allotted for the Westminster buildings," and of this amount he understood "that not much more than £10,000 was spent during Mr. Brydon's lifetime." "The site," Lord Balcarres adds, "is one of the finest in London, and it would be deplorable if we save a few thousand pounds and thereby imperil the dignity and refinement of the buildings."

Mr. C. A. Whitmore, M.P., who was a member of the Select Committee of the House of Commons that reported upon the sites for the new Public Offices, also supports the appeal to the Government to appoint an architect of distinction to carry on the work.

Mr. Leonard Stokes, one of Mr. Brydon's executors, states (*Times*, 15th August) that the drawings left by Mr. Brydon, and now handed over to the Office of Works, were but incomplete drawings for the carcase of the building. "Two-fifths of the fees due to Mr. Brydon on the whole building were paid for these drawings; therefore it may be taken that three-fifths of the work which Mr. Brydon was employed to do remains to be done by someone." Answering the plea of another correspondent for the completion of the buildings without variation from the original designs, Mr. Stokes says that it is practically impossible. Enough evidence of the designer's intentions does not exist, so that someone must take up the work and give the five or six years of constant attention to it which the designer himself would have given had he lived. "A number of half-inch scale details are in existence," Mr. Stokes continues, "but many of these were hurriedly made to help the quantity surveyors to obtain a tender, and Brydon himself would be the first to admit that these drawings required very careful reconsideration and revision."

The President, Mr. Wm. Emerson, writes:—

"The architecture of our great public buildings is a subject demanding the most careful consideration on the part of those responsible. The enlargement of thought and wide artistic

perception caused by modern travel, and the growing appreciation of art by the educated public, can scarcely be met by the unsatisfactory arrangement for the completion of the above-named scheme under the auspices proposed by the Government.

"One of the most important factors in ensuring a satisfactory result in architectural work, after the first conception has been delineated by small-scale drawings, is that all details and full-sized mouldings should be carefully considered as the work proceeds by the author of the design himself. If this is impossible, as in the present case, owing to the lamented decease of the architect, surely the first thing to be done is to select some first-rate man entirely sympathetic with the class of work the original designer proposed, and of undoubted competence to carry it to completion.

"That the public grasps this point and requires some such assurance of the success of the undertaking there can be no doubt, especially as Sir John Taylor, whose talents everyone admits, is practically retiring.

"Surely the Government can easily take this necessary step: it can hardly be, as has been suggested, that the object is to save the architect's fees that such a course is not to be adopted—for the proper supervision of a work of this magnitude would certainly require a considerable extension of the staff and premises of the Office of Works, and would necessarily entail very much the same expenditure as if it were carried out by an independent architect.

"The history, culture, and quality of nations are shown to future generations by their public works in a most potent manner. One would therefore think that no effort would be spared and no loophole left by which anything but absolute success could accrue to so great a scheme as this block of Government offices.

"I can unhesitatingly say that the architectural profession are awaiting the action of the Government in this extremely important matter with the greatest interest, coupled with some anxiety, not from the view of possible professional emolument, but in the highest interests of the art of architecture" (*Times*, 17th August).

The *Times*, in a leading article on the 26th, strongly endorses the views of its correspondents, and says:—

The folly of the proposed penny-wise action is at once apparent if we ask ourselves, How would they manage this thing in France? The question has only to be asked; the answer comes of itself. Of course, a nation which possesses a real artistic tradition, which respects and fosters art and regards the beauty of its cities as one of the most important of national possessions, would not dream of entrusting such a work to any but the most skilled hands. Professional opinion would make itself instantly felt, and a Government department dare not oppose or ignore it. Professional opinion has spoken here, in the letters of Mr. Emerson, Professor Aitchison, and Mr. Stokes: and we doubt not that the whole of the Institute and the Royal Academy agree with these gentlemen. We are as yet, unfortunately, a long way from the time when English public opinion instinctively asks to be instructed by the experts, but yet we have made some advance of late years. The architectural conscience of the nation has shown some signs of waking up. Monstrosities are not quite so easily perpetrated as they were; we doubt whether to-day another Queen Anne's Mansions would be a possibility. Our domestic architecture has made a great stride forward, thanks to Mr. Norman Shaw and a few of his contemporaries. If in large public buildings we are yet without the certainty of obtaining a fine result, there is at least some general and more or less acute dissatisfaction if we do not. A sufficiently large fraction of the public has learnt to know the difference between good and bad, whether in a design as a whole or in the details. If, then, the opportunity now given is missed; if the details of the Parliament Street offices are scamped or unintelligently executed, there will be a great deal of perfectly justifiable discontent.

The Queen Victoria Memorial.

The General Committee of the National Memorial to Queen Victoria have agreed to the following recommendations of the Executive Committee (Sir E. J. Poynter, P.R.A., Sir L. Alma-Tadema, R.A., Mr. Wm. Emerson, *President R.I.B.A.*, Lord Windsor, Viscount Esher, Sir Arthur Ellis, Mr. A. B. Mitford, and Mr. Sidney Colvin):—

1. The Committee recommend that Mr. Brock's design for the Memorial be accepted, subject to such modifications as may be necessitated by the scheme of the Memorial as a whole.

2. That Mr. Aston Webb's plan for the general treatment of the space in front of Buckingham Palace be accepted, subject to certain necessary changes.

3. The Committee further recommend that the consideration of the remainder of the Mall scheme be postponed until the amount of the subscription to the National Memorial has been completed.

All the competition designs are to be publicly exhibited.

Professor Aitchison's Portrait.

The portrait of Professor Aitchison by Sir Lawrence Alma-Tadema, R.A., recently exhibited at the Royal Academy, has been lent to the Royal Birmingham Society of Artists for their autumn exhibition in Birmingham.

The late Mr. H. Yeoville Thomason [*F.*].

Mr. H. Yeoville Thomason, whose death was announced in the last issue of the JOURNAL, was born in Edinburgh in 1826. He belonged to an old Birmingham family, his grandfather being Sir Edward Thomason, High Bailiff of the Borough of Birmingham before its incorporation, and a manufacturer who was also interested in art. Yeoville Thomason was articled to a Birmingham architect, Mr. Charles Edge, and subsequently became manager of the architectural department in the Borough Surveyor's office. He afterwards travelled a good deal, and made a study of

architecture in Italy. Before he was engaged on public buildings he was chiefly occupied in designing private residences in Edgbaston and other suburban districts of Birmingham, from 1840 to 1870. Among the important buildings he carried out may be mentioned the Aston Workhouse (about 1865); the Acocks Green Congregational Chapel; the Birmingham District and Counties Bank; the Birmingham *Daily Mail* offices and the Birmingham *Daily Gazette* offices; the Atlas Works for Messrs. Horace Woodward; offices and shops for Messrs. Thos. Hope Bros. in Birmingham; the large establishment of Messrs. Lewis—the first concrete and iron building erected in Birmingham, and his last large executed work, completed in 1886—after which he retired from practice. He was best known in Birmingham, however, as the architect of the Municipal Buildings and Art Gallery in that city. His arrangement of the seating in the Council Chamber at Birmingham, he claimed, had furnished a model for the arrangement of several subsequently erected Council rooms.

REVIEWS.

THE ARCHITECT AS ARBITRATOR.

The Engineer or Architect as Arbitrator between Employer and Contractor. By Charles Currie Gregory, Barrister-at-Law, of the Bar of Nova Scotia. 8o. Lond. 1901. Price 12s. 6d. [Messrs. William Clowes & Sons, Ltd., 7 Fleet Street, E.C.]

If this is not a good book, that is due to no want of knowledge of his subject on the part of the author; he shows himself throughout it to be thoroughly conversant with the practice of architects and the law affecting it. And yet it is not a good book. I venture to think it is a work that will seldom be consulted by the practical lawyer and never by the practical architect, and this solely because of two defects, which one would imagine might easily have been avoided. The first of these is the absence of any finger-posts, as they may be called, to direct the reader the way to what he wants; the second, the author's extraordinary mode of expressing his meaning.

As to the first, the author sets out in chapter ii. the scope of his book, which is far larger than the title indicates. It embraces the whole duties of engineers and architects as between building owner and contractor, and he arranges these duties in this way:—

1. Functions of definition of the work required to be performed.
2. Functions of approval of work after it has been performed.
3. Functions for the enforcement of diligence on the part of the contractor, and to afford the employer a means, by his own act, or by the act of his agent, to avoid sustaining injury through a delay in completion of the work.
4. Functions of ascertaining and certifying the amounts payable to the contractor.
5. Functions of arbitration between the parties.

Now this may be a very good skeleton arrangement of the functions which an architect has to fulfil in carrying through a building contract. But it is only a skeleton arrangement. Yet the author treats it as a sufficiently detailed scheme under which to discuss, with the help of scarcely a single sub-heading or cross reference, the whole law relating to architects and engineers. He devotes a chapter to each of the five functions, and it is only in those dealing with functions 3 and 4 that he thinks any further division up of his matter necessary. Then he puts in at the end of the book a chapter on "Extras," which apparently does not quite fit in with the arrangement. This subject he discusses in over sixty pages of small print without a break.

Of course with such an elementary arrangement of his matter there must be continual overlapping. But what, from a practical point of view, is perhaps worse, is that one has the very greatest difficulty in finding exactly what one is looking for. And judging from my own experience, the index attached to the book is of very little assistance in overcoming this difficulty.

And when one does find what one wants, the way the author expresses himself upon it is often bewildering. His language is always highly abstract and frequently involved beyond belief. One sentence—a particularly bad one it is true—will be sufficient on this point. At p. 117 this is printed:—

> An excess of the engineer or architect's power under the arbitration clauses of the contract, as well as under those purporting to constitute him the sole interpreter of the contract, and the certifier for payment of the contractor, might be very difficult to be shown, if the provisions of the contract were such that the contractor might, in good faith, set up the contention that the parties having made provision for powers to be exercised by the employer, or by the engineer or architect, which might be exercised in the interim between the ordering of any work and the exercise of the functions of certifying for payment for it, they must have intended that the operation of the provision that the contractor should not be entitled to be paid for any extra work executed by him without the written orders of the engineer or architect, should be understood as being limited to the effect which the engineer or architect should give to it, when, taking into consideration all the provisions of the contract, and the manner in which the various powers therein provided had been exercised, he determined the amount which he should certify for payment to the contractor.

A good mode—when it is possible—of testing the substance of a law book is by comparing the author's conclusions on some point with the decision of the Courts upon it when such decision has been arrived at subsequently to the publication of the book. Such a mode of testing Mr. Gregory's book presents itself, and it must be said that the result is very satisfactory to Mr. Gregory.

There has long been a controversy as to the capacity in which an architect or engineer acts when issuing final certificates under a contract for works by which his certificate is made conclu-

sive as to accounts between the building owner and the contractor. Lawyers, as a rule, have inclined to hold that he acts simply as the agent of the building owner. Architects and engineers, as a rule, have inclined to hold that he acts not as the agent of the building owner, but as a quasi-arbitrator between him and the contractor. The point is important, since if he acts merely as agent of the building owner he is liable to the building owner for any damage resulting to the latter through want of care or skill in granting the certificate, while if he acts as a quasi-arbitrator he is not. Obviously this consideration makes the point of great importance to the architect and building owner. It also makes it important to the contractor, since if the architect is liable for any damage resulting to the building owner through mistakes in certifying, it seems likely that some architects, being only human, will take care that any mistakes which occur in their certificates will not be injurious to the building owner; in other words, when in doubt they will favour him.

This consideration has been strongly present to the mind of the Courts in considering the point. A difficulty, however, in the way of their holding that the architect acts as quasi-arbitrator has been this: If they hold that the architect acts as a quasi-arbitrator in granting final certificates, how can they logically refuse to hold that he acts in the same capacity in settling other questions between building owner and contractor as to the quality of the materials, the quality of the work, the progress of the work, and such like? In all these an honest architect must act not as the mere agent of the building owner, but fairly and judicially as between man and man. But if you hold that he acts in deciding these points also as a quasi-arbitrator then he ceases to be liable to the building owner for want of care or skill practically altogether, and the end of it all is that the architect who is employed and paid by the building owner to supervise the building operations may practically do so as carelessly or inefficiently as he pleases, and the building owner has no remedy. This is counter to an old principle of English law which a great industrial community like England is not likely quickly to abandon—namely, that a man employed to do skilled work must do it with care and skill, or be liable for the consequences to his employer.

This question as to final certificates was before the Court of Appeal recently in the case of *Chambers* v. *Goldthorpe* and *Restell* v. *Nye* (1901, 1 Q.B. 624). The Court were not unanimous in their decision upon it. The majority (the Master of the Rolls and Henn Collins, L.J.), while holding that the architect in deciding the various questions arising during the construction of the buildings was undoubtedly acting merely as the agent of the building owner, yet held that in issuing his final certificate settling accounts between building owner and contractor he was acting as a quasi-arbitrator. Romer, L.J., held that no distinction could be drawn between his functions in deciding points during the progress of the works and after their completion, and in both he was acting as the paid agent of the building owner.

For the present it may then be taken as settled that an architect in granting final certificates is not liable for negligence to the building owner, except, of course, when such negligence is so great as to amount to fraud. The considerations on which the Master of the Rolls and Collins, L.J., based their decision seem to be identical with those stated by Mr. Gregory at p. 68 of his book, though in this case he states them more clearly than their lordships. After distinguishing the work done by an architect during the progress of the work as the function of defining or directing the work that the contractor has undertaken to do and the granting of a final certificate as approving the work that has been done, he says:—

> Good faith may appear to require that the engineer or architect should approve of work which had been performed in accordance with all the directions given as well as in a workmanlike manner and of merchantable materials. But it is not in the exercise of this function of approval of the work, but in that of giving sufficient directions to enable the contractor to know exactly what will be exacted in the exercise of the function of determining whether the work shall or shall not be approved of, that the engineer or architect's conduct is capable of criticism or review. The complete separation of the functions of directing the contractor as to the work to be performed, and of approving of work after it has been performed, enables the former to be regarded as functions of the agent of the employer and the latter as those of an arbitrator, not in the sense of one who adjudicates upon remedial rights arising by law upon a breach of contract, but in the sense of who is called upon to determine whether a contract undertaking has or has not been fulfilled.

Mr. Gregory is speaking merely of approval certificates, but his reasoning applies at least as strongly when the final certificate also settles accounts between employer and contractor.

Probably the distinction here set out and adopted by the Court of Appeal is as convenient practically as any that could be suggested. But it can hardly be said that it is based on anything but convenience. And it places the architect in a very free and privileged position. In granting final certificates he is not an arbitrator but a quasi-arbitrator. If he were an arbitrator he might be removed on proof of prejudice, and his award might be set aside on proof that he denied either side a fair and full hearing. But as quasi-arbitrator he is subject to no such restrictions. Honest prejudice will not legally disqualify him from certifying, and he may certify on any evidence, or no evidence, if he pleases. His certificate binds all parties, and he is liable to no penalty or damages unless he has been guilty of actual fraud in issuing it. This has always been the case as

regards the contractors, and it is greatly to the honour of architects and engineers as professional men that contractors knowing this have long been willing to accept their certificate as final. It is now the case as regards the employer too, and there is little reason to doubt that they will be equally ready to trust to the honesty and uprightness of those whom they retain to supervise their works.

J. ANDREW STRAHAN [*Hon. A.*],
Barrister-at-Law.

WATTON ABBEY.

The Gilbertine Priory of Watton, in the East Riding of Yorkshire. By W. H. St. John Hope, M.A. Reprinted from The Archæological Journal. Vol. lviii., No. 229, pp. 1–34. [*Messrs. Harrison & Sons, St. Martin's Lane, London.*]

Travelling north from Hull, through the great plain that stretches from York to the Humber, and shortly after the grey western towers of Beverley Minster have dropped below the horizon, you will notice on the left, 'midst a wood of elms and surrounded by fields of wheat and clover, the red and grey towers of the "Abbey" of Watton. If you wish to visit it you alight at Hutton Cranswick, and after a walk of a mile and a half through the pastures, and having followed the moat which surrounds the buildings, you arrive at the bridge and find yourself before what remains of the Priory. But if you have come armed with Mr. St. John Hope's book, hoping to have a delightful day in exploring the remains of the conventual buildings with the aid of his excellent plans, you are doomed to disappointment, for only undulating grass now marks the spot where he has shown church and cloister and vaulted undercroft.

Of the buildings of the Gilbertine Order, founded by Gilbert, rector of Semperingham, little was known until lately, and much has still to be explained. Of the twenty-six monasteries of the Order in England mentioned by Dugdale, Watton was the largest, and the excavations made by Mr. Hope have proved it to be the most complete. It is therefore regrettable that the results which he brought to light are again lost to us. The only portions now left above ground are the Prior's Lodging, with its beautiful oriel window, the "Old Dining Hall," and a detached building now used as a stable, which Mr. Hope thinks is of a date subsequent to the suppression, but which was more probably built about the same time as the Prior's Lodging. The Priory is said to have been founded in 1150, and was surrendered on 9th December 1539. By the rules of the Order the nuns were completely secluded, and could communicate with the outer world by a window only.

The plan shows two complete groups of monastic buildings, each consisting of a church or chapel, a dorter on the east over the chapter house, parlour and warming house, a frater on the north, kitchen and lodgings for novices, lay brethren, or lay sisters, surrounding a cloister. These two buildings were connected by a gallery or pentise, midway in which were found the foundations of a building which Mr. Hope thinks was the window house (*domus fenestræ*), in which was placed the window and turn wheel which formed the only means of communication between the two buildings. The discovery in the Public Record Office of a survey taken at the suppression enhanced the interest of the explorations, and the dimensions given in it agreed very closely with those of the actual buildings. The plans are carefully drawn from measurements taken by Mr. Hope and Mr. Harold Brakspear, and the book is also illustrated by photographs and details drawn to scale.

Leeds. FRANCIS W. BEDFORD.

GARDEN MAKING.

The Art and Craft of Garden Making. By Thomas H. Mawson, Garden Architect. Roy. 4to. Lond. 1900. *Price* 21*s. net.* [*B. T. Batsford*, 94, *High Holborn.*

We are very glad to notice a second edition of Mr. Mawson's *Art and Craft of Garden Making* within such a short time of its publication. The fact of this early call for another edition proves that the work has met a recognised need, and the additional matter, both of letterpress and illustrations, increases the value of the book.

In his preface to the second edition, Mr. Mawson insists strongly on the importance of massing in the arrangement of trees and shrubs, and indeed of flowers. Small gardens are often spoilt by the restless effect produced by trying to have something of everything—fancy shrubs of various kinds, and flower-beds dotted with specimens, that give the garden a speckled appearance by the indiscriminate mixture. There is, of course, more excuse for this mixing in a small garden, where plants are often cultivated for their individual interest, and where space is limited, but the value of large and handsome grounds is often quite unnecessarily spoilt by the same fault. Mr. Mawson's remarks on this subject supply matter for another chapter to his book.

The additional illustrations are a very welcome feature: they not only elucidate the text, but are in themselves a very pleasant decoration.

The book has been carefully revised throughout, and more than that, for nearly every chapter contains fresh hints and practical advice for laying out the grounds of a mansion or the humbler garden of the villa and cottage.

Cambridge. W. M. FAWCETT.

RIGHTS AS TO SEWAGE.

By Algernon Barker, Barrister-at-Law (Newcastle-upon-Tyne).

PART III.*—INSUFFICIENT SEWERS—FOREIGN SEWERS.

Complaints of Insufficient Sewers.—And now we come to consider what we are to do if we need, and the authority has not supplied, a sewer into which to empty under section 21. We might take seven courses of action, of which four—viz., agreement with the local authority, application through the Parish Council to the County Council, through the County Council to the Local Government Board, and petitions direct to the latter—are good, while the rest are bad. We might have to pay costs even where we took the right method, if our case was bad on the merits. It would be wiser therefore to adopt the good methods in the order which I give, as I begin with the humbler tribunals.

First, there is agreement, which is the best of all, if it succeeds, and, whatever means you are afterwards forced to adopt, the fact that you first tried the effect of courtesy will do you no harm. Indeed, before adopting any other method, first try this, and let the demand be a simple one and not contain extraneous matter (*Ex parte Parsons*. See "Chambers's Digest").

The second plan is to apply through the medium of the Parish Council to the County Council. The Parish Council has power to voice your complaint under section 16 of the Local Government Act 1894, which gives the County Council thus set in motion all the powers which the Local Government Board possesses, as fully as if it were itself that august body. Thus it could lay the sewers at the authority's expense, or could obtain a *mandamus*.

Thirdly, you might state your grievance through the County Council to the Local Government Board. It is the duty of the former (under section 19, sub-section 2, of the Local Government Act 1888), through their medical officer, to report, and, if so minded, to complain, to that Board as to the general sanitation of the county. This plan might be adopted in conjunction with the next, but I should suggest that the officer be persuaded to launch his strictures before you make your complaint.

The fourth method is to directly petition the Local Government Board under section 299 of the Public Health Act. Anyone may make this petition. The facts must be clearly stated on foolscap; and though there is nothing about plans in the Act, I have no doubt that these would be useful. The ground of complaint must be that the local authority has not provided sewerage sufficient for the drainage of the district, and so the petition should have a noble flavour of altruism and public spirit, and deal with the Council's shortcomings as to others besides yourself. If it could be signed by other inhabitants or ratepayers, this would help.

When finished, the petition should be addressed to the President under cover of the Secretary. The Local Government Board will then communicate with the authority to see if it will repent or if it has an excuse. If the latter is the case, an inspector will appear on the scene and make his report. The Local Government Board will then give or withhold leave to sue, or will itself sue, or will do the work for the authority at the expense of the ratepayers. If action be taken, the judges will as a matter of course confirm the decision of the Local Government Board (unless the latter be acting outside its jurisdiction) (*y*).

When Complaints should succeed.—If you ask for concrete cases to show in what instances the Local Government Board or the County Council would act, there is *Kinson Pottery Co.* v. *Poole*, 1899, where twelve houses in Ringwood Road in the rustic part of Longfleet seemed to be too few for a sewer to be brought "miles" to them. The sewers, again, need only be sufficient for ordinary sewage and rainfall, and not for special floods (Fitzgerald, P.H.A., ed. 7, p. 22). They need not be provided until the buildings are about to be, or are being occupied (*R.* v. *Tynemouth R.D.C.* [1896], 2 Q.B., 221, 224, bottom, 225 and 453), and the fewer the houses the less elaborate need the system be (*ibid.*, 225).

Most important of all, however, is the principle that the sewers are not so much required in the interests of the householders as for the safety of the public (*Glossop* v. *Heston*) (*t*). And see generally note (*s*).

Now for three bad methods, in case they are suggested.

We might try what I will call "moral suasion" of the kind tried last winter by our Irish friends in

* See Parts I. and II., pp. 369, 442 *ante*. The notes to this part will be found on page 474.

Parliament to the discomfort of both "ayes" and "noes." In this case the plan would be to create a nuisance by, for instance, turning our sewage into a roadside ditch or watercourse. If we could prove that the local authority had shirked its duty as to supplying sewers, it could obtain against us neither an injunction nor an order before justices (*Fordom* v. *Parsons*; *Kirkheaton* v. *Ainley*). In fact, the authority cannot sue unless it sewer. But then if we illegally pollute a watercourse there is the County Council, empowered by section 14 of the Local Government Act 1888 to take proceedings against us, and also conservancy boards having similar powers. If, again, we foul a ditch, or create an unpleasant odour, the Parish Council may, if they can do so without entering our land, abate any nuisance we create and stop up our drain, and there are plenty of amateur inspectors of nuisances who could proceed. A landowner in a Midland district which shall be nameless tried by this form of moral suasion to spur on the District Council. He quickened the passers-by, but I have not heard that he accelerated the authority's sewer.

Another bad method would be to go direct to the Court for a *mandamus*, for, where an Act has created a special procedure like the foolscap method under section 299, this is intended as a substitute for the ordinary common law remedies (*Passmore* v. *Oswaldtwistle* [1898], A.C., 387).

The last bad method—*i.e.* obtaining an injunction—one might feel tempted to try when there was a sewer, but it was a bad one. A man might think that, if he could stop up the bad sewer, he could thus indirectly force the authority to supply a good one. One cannot, however, thus ventilate one's grievances by a side wind (*Glossop* v. *Heston*; *A.-G.* v. *Dorking*).

Compelling home Council to compel in home District.—Thus the local authority can be compelled to afford sufficient sewers for the drainage of the district; but suppose that in order to do this they themselves have to use force, can we compel them to compel either access or purchase? I am sure we can. *Glossop's case* leaves room for this opinion. Railway companies, which are not usually bound to make a line, can, when they are so bound, be forced to use, or punished for not using, their powers of compulsory purchase (*R.* v. *L. & Y. Railway*; *Cohen* v. *Wilkinson*). Why, then, should not local authorities, which are bound to supply sufficient sewers, be forced to wield their compulsory powers against intervening owners, if adequate drainage is unattainable unless these are exercised?

The method of compelling to compel would be as follows: The Local Government Board or County Council to whom the complaint was made could either obtain a *mandamus* to force the authority to compel, or could, as its agents, carry sewers under section 16, or enforce sale of land—*i.e.* exercise its powers of compulsory access or purchase. The surveyor must still be reckoned with in the case of compulsory access as to "lands," and, if he supported the Council, the sewer could not be carried under section 16.

Compelling home Council to supply Sewers in foreign District.—Can you force your Council to provide sufficient sewers in the district of another? Yes, I think that if such sewers are really needed to drain the home district, as, *e.g.*, where your sewage has *not* already crossed the borders, or, if it has crossed, is dammed back owing to the bad outfall in the foreign district, and they can at a comparatively reasonable cost be made, their supply could be enforced (*u*). In laying these sewers in an adjacent district, whether compulsory access or purchase has to be exercised or not, an authority must carry out the provisions of sections 32–34 of the Public Health Act, and obtain the sanction of the Local Government Board. (For details see *ante*, Part II., p. 450, col. 2, "Compulsory Access or Purchase in Neighbouring District.") All the sewers thus made by the home Council in the foreign district will, unless otherwise agreed, be home sewers.

Here, then, we may compel compulsion, but subject to the above conditions and also to the same restrictions as in the home district. (See last Part, *sub* "No Trespass").

One thing your authority cannot do: it cannot, I think, without the sanction of the neighbouring authority, empty into its sewers (*w*). You cannot, therefore, force your Council to insist on doing so, but I think you could compel it to make a reasonable attempt to obtain such sanction. But this is anticipating the next topic.

FOREIGN SEWERS.

We now proceed to the third class of receptacle into which (under section 22) you can empty your drainage, and that is the *sewers of the neighbouring authority* (see last paragraph of (*u*), p. 380, Part I.). Under this head we will also discuss the rights, if any, of your local authority to do the same. If you are so fortunate as to be near the borders of an authority which is blessed with an eligible system of drainage, you may sometimes find, in spite of the fact that you will have to buy your rights, that this is preferable to troubling and being troubled by your own Council. By section 22 of the Public Health Act "the owner or occupier of any premises without the district of a local authority may cause any sewer or drain from such premises to communicate with any sewer of the local authority" (that is, the urban or rural authority adjoining) "on such terms, &c., &c." The terms are those agreed upon. In default of agreement, you will within a reasonable time have the right to choose whether the terms shall be settled by

arbitration or by justices of the peace. These foreign sewers may be within the home district. The right is absolute, subject to terms. (See later as to avoiding the restrictions of section 22—last two paragraphs before final "Memorandum.") To a reasonable extent the size of the aperture from your drain can be curtailed, but the amount of your sewage cannot otherwise be limited. The neighbouring Council has power by injunction to prevent you from connecting if you do not comply with the terms, but, once connected, however wrongfully, it cannot disconnect you on any grounds whatsoever (see *Newington* v. *Cottingham*).

Here, again, there is an implied stipulation and prohibition against nuisance and trespass, and any remarks on those heads apply here also. In considering the case, however, of a drain-owner connecting under section 21 in spite of the freeholder (see "No Trespass"), I in note (*g*) differentiated streets and roads, as the latter more rarely carry the sewers of the authority of their district. The reader should at this juncture reperuse note (*g*), p. 451. I do not think this distinction can be made in this case, for except in some instances where the borders of districts consist of rivers, which would in most cases make s. 22 useless and needless, as they would usually be impassable by pipes, they usually run at a distance from centres of population (I speak subject to correction), and so sewers near the borders and available for section 22 are at least as often sewers in roads as sewers in streets. I think, therefore, that there is an implied right *as against the freeholders* to excavate both authorities' roads and their streets. The neighbouring Council cannot forbid you to excavate their streets or roads, or, in certain cases, their lands (see "No Trespass"), for it is their duty to afford reasonable facilities for foreign as well as home sewage (*u*).

Compulsory Access by foreign Council.—We may have to fall back on *compulsory access* under section 16. In all cases, as we know, double-sewage must be flowing, have flowed, or be likely to flow, so as to give the authority an acting sewer, or an honest excuse for intending a sewer (see "How to produce a Sewer.")

Neighbouring Surveyor.—If the surveyor to the neighbouring authority is reporting as to the "necessity" for the exercise of its power of compulsory access as to lands, he should not, unless expense be disproportionate, report that there is no necessity, simply because you wish to empty the sewage of premises in another district (*u*), provided always that the sewage has already crossed, or perhaps if it is dangerously near, the border.

Compulsory Purchase by Foreign Council.—Again, will compulsory purchase avail us as a help to reaching the neighbouring Council's sewer? We have already seen that this process will require the longevity of a Methuselah, and, for the Council, the purse of a Rockefeller. As we are, I think, precluded from offering to recoup the authority which exercises this power, we could only in the most extraordinary circumstances persuade our neighbouring Council to help us in this way. In what cases will compulsory purchase be useful? It will be found advantageous where (in the case of lands) the Council, indeed, to which we apply is friendly, or can be forced to act, but their surveyor is hostile and irremovable. In this latter case the wielding of compulsory access could not, as we have seen, be forced. Purchase will also be required when lateral support is wanted, or where, as detailed earlier in this lecture, Part II., p. 449 (*q. v.*), War Office or Admiralty estates, or certain property of statutory land improvement and canal or harbour bodies, intervene (*x*).

If it is desirable that the foreign Council exercise compulsory powers in the home, or *in some third district*, see "Compulsory Access or Purchase in neighbouring District," *ante*.

Complaints against foreign Council.—We could (*u*)—but only if our sewage had crossed the border—by complaining of the neighbouring Council (*i.e.* the authority in whose district our premises are *not*) under section 299 or analogous methods (see "Complaints of Insufficient Sewers," *ante*), compel it to supply sewers, and even to exercise its compulsory powers, though the sewage was imported (*u*), in just the same way as if it had been indigenous—*i.e.* where adequate drainage of its own district is unattainable unless these powers of compulsory access or purchase are exercised (*v*). But if our sewage had united (not of course in a foreign sewer) with other sewage on our side of the border so as to vest the sewer in our authority, the matter would be out of our hands, while our authority has no powers of forcing its neighbour to receive its sewage into existing sewers, and therefore could not require the latter to make new sewers.

If we wish to enforce on a foreign council the exercise of compulsory powers, our *bona fides* would not have to be merely transparent, but even "simple and childlike," and the volume of sewage would have to be Mississippic. I may refer to my previous remarks as to compelling to compel.

But circumstances may be such that we can avoid the restrictions of section 22 by "producing a sewer" (see *u* in Part I., p. 380).

Again, our premises may be one, but be half in one district and half in another, in which case we could choose whether we would consider our connection as being under section 21 or 22, or if we "produced a sewer" under neither.

The drain-owner cannot connect with the sewers of a district under section 21 instead of section 22 simply because he has drain-pipes there (*a* in Part II., p. 451), unless the fount of the sewage is also there.

Council's rights of emptying.—The other authority can agree to accommodate the sewage of your district, under section 28, to which I refer, subject to the sanction of the Local Government Board, and to the provisions of section 28 and, where the sewer is in the foreign district, of sections 32–34, so far as applicable, and can agree to take storm waters and the sewage of some third Council which drains into the sewers of your Council. A deadlock, however, may arise when your authority tries willy-nilly to pour its sewage into the neighbouring authority's sewer, for it is not very clear whether under section 28 your Council would have an absolute right to do so. There are good reasons for thinking they can, and there are good reasons for thinking they cannot. I argue the matter at length in note (*w*). I have come to the conclusion that they have *no such absolute right*, even subject to the sanction of the Local Government Board and to the provisions of sections 32–34.

This may conclude the consideration of our rights as to sewers. It only remains to give in a short form, as it were, a remembrancer, founded on our investigations and discoveries.

Memorandum.—When building an erection or laying out premises which will give off sewage, first see what kind of receptacle, be it sea, tidal river, cesspool, private ditch, field, sewer of your own Council, or sewer of its neighbour, and what site and elevation would afford you the greatest sanitary advantage, having regard to expense of construction. That is a matter on which the law will not enlighten you. You may, however, find that owing to legal difficulties you have to fall back on the second or third best, or to change your site, or "produce a sewer," so as to obviate the obstruction of intervening owners. By moving your site across or partly across the border you may also avoid interference under section 25 or 23, or gain rights over another district. By producing a sewer you may in addition avoid the restrictions of sections 21 or 22, saving the expense of making a longer drain or of cleaning the existing drain which you thus sewerise (see *s*, *u*, in Part I., p. 380). The next thing to do will be to look through the memoranda contained below, and, as the case requires, revise and if necessary delete them in accordance with the law of the place in which you build, *e.g.* the by-laws of Little Pigswill or Hogs Norton, or with the Public Health Act Amendment Act 1890, which has been adopted by the Council of Asses-milk-cum-worter or with the Mudchester Improvement Act. I regret that I have been unable to deal with these in the present lecture. We may then consider the memoranda given below. For convenience I treat the reader and the drain owner as one person.

I. Generally: Whatever receptacle you choose, think whether your duties under section 25 or 23 interfere with your rights. As to this I must refer you to a later lecture.

II. Special: (i.) You choose sea or tidal river. Has the Local Government Board made a provisional order vetoing it? Information as to this is very hard to obtain.

Is the sewage alone, or in conjunction with other sewage, likely to kill salmon, or is the drain against a sea-fisheries by-law? (See Addenda, *post*, note *u* to Part I.)

Is the freeholder or other person who is interested in the foreshore likely to object? Will there be a public (see *e*, Part I., p. 379) or private nuisance?

(ii.) You choose a cesspool or private ditch; will nuisance arise from this?

(iii.) You choose the authority's sewer, then

(1) Examine their map of sewers, and (2) think if you need trouble about section 21 at all. You can perhaps "produce a sewer" as described above and below under the seventh head, and save cost as well. (3) If you cannot do this, remember to give notice, if required, to the authority and read their regulations as to connections, and wait till Doomsday for their official. (4) Discover what streets intervene in their district, and whether you are the freeholder to half across the street, and whether the sewer lies on your half. See what route the Council or the freeholder (if you are not that person) would require you to take, obeying the Council where these directions clash. (5) You will then ascertain as to intervening roads, and had better for safety apply to the freeholder verbally (if you are not that individual), and also to the County Council as to quondam rural parts of main roads, if you must disturb surface. This last requirement as to main roads may involve an examination of the history of a district to see if it was rural or urban before the Local Government Act of 1888. (6) Then the intervening lands must be considered, and the leave of freeholders and leaseholders obtained—except, perhaps, where your own Council occupies and has the freehold. (7) Suppose there is hostility on the part of owners of intervening roads, vaults, or lands to be overcome, can you meet it? Only by producing a sewer, *i.e.* by supplying or promising double-sewage.

(A) The first person, therefore, who regrets he can't see his way to admit your conduit, &c., &c., you should look once more at your plans, and at the neighbourhood. Will friend Jones abolish the dear old cesspool which has been consecrated by generations of Joneses? Have you or has your neighbour, while the house is being built, put workmen's conveniences into it or into a shanty and furnished them with water and drains? What will Smith do with the drains of his new building? Will you put up another villa to accompany yours? Will the establishment sup-

port a gardener, or where are the pig-owning tenants who will rent during operations?

(B) Again, look around and see if you are likely to have neighbours and can in this way promise double sewage to the authority. Then, again, are there sufficient people who will benefit, having regard to the feet of sewer to be carried and the costs of access, for the authority may wish to leave you in the lurch?

(C) There will also, in the case of lands, be the surveyor to see. I have said on what rules he should or should not act, but it would be inadvisable to try to teach him the law. If he is obdurate, you might calculate the chances of his "resigning" his office at the request of his Council; but such a dismissal, if desired solely to please the building owner, would be unlikely, objectionable, and ineffectual. Then there are other matters which may be safely left in the hands of the Council, and have been already dealt with in the foregoing pages.

(D) Is any of the property Crown property? If so the leave of the Crown must be obtained. There is no compulsory access over War Office and Admiralty property. Remember that compulsory access may find vulnerable points in the armour of the statutory drainers, canal and harbour owners excepted in sections 327 and 328.

(E) Perhaps compulsory purchase may avail you in the case of these bodies, the Crown always excepted, and also may be useful where the surveyor is recalcitrant, or if lateral support is required for the sewer. I refer to previous remarks and notes.

(8) Your authority may have sewers in the next district, with which you may wish to connect, or you may wish to persuade or to force them to supply such. Remind the Council if necessary, and without offence, of the advertisements and notices as to sewage works without the district.

(9) What about rivers pollution (section 3 Rivers Pollution Act), and the 100-feet rule under sections 25 and 23 of the Public Health Act? What about fish-poisoning?

(10) Suppose there is no sewer to empty into, can you insist on having one? Yes, if on the merits you have a good case, after a courteous and relevant request, you can apply to the Parish Council, to the County Council, or to the Local Government Board, and this I think is the order in which you should apply. The house or houses must not only be erected but be ready, or nearly ready, for occupation. The Council need not drain the plans in your office. One building may, if large enough, require and deserve sewers. Private disease may lead to public epidemic. The prevention of public epidemics is the object of the Act.

(iv.) You choose the neighbouring authority's sewer—*i.e.* a foreign sewer. Well, then, all these questions in (iii.) may be asked again and these hints reperused. In this case, if you "produce a sewer" (see iii. (7)), section 22 will be deprived of its sting. Will you build also in the neighbouring district, and be under section 21 there? Again, the foreign sewer, though vested in the neighbouring authority, may be in your district, and you might find such a sewer specially useful where its guardian Council was friendly and the surveyor of the latter inclined to report "necessity" as to intervening lands where your own would not. If the neighbouring surveyor is hostile, can he be dismissed? Is the property "excepted property"? Will compulsory purchase avail you? You can only bring force to bear on the foreign Council by pouring sewage into or perhaps dangerously near its district. But I refer to the whole of the above remarks in (iii.).

(v.) A few other notes as to both (iii.) and (iv.) may be made.

If both Councils are willing to compel access for a sewer, or sale of property, then let each (so far as requisite) do so in their own district and save expense under section 32, &c.

If it would indirectly benefit you that your Council or the neighbouring one should drain into the other's sewers, and the Council which is requested to receive the sewage objects, then you may lay stress on the arguments (*w*) which might be adduced to show that objection is not permissible, or see if some intervening private sewage farm in either district cannot give the donors of the sewage such absolute right under section 21 or 22.

If your own Council is hostile and your neighbour willing, but the outfall should, on account of the lie of the ground, be in your own district, then compare the expense and feasibility of a foreign sewer there under section 32, &c., or a home sewer there enforced by section 299, and *vice versâ* if the foreign Council is hostile, and you prefer outfall in the foreign district.

Thus we have seen your powers to empty into sea, tidal river, and cesspool; your power to empty your drain into your Council's sewers, or, property intervening, to obtain the same result by "producing a sewer," and persuading or forcing your authority to compel access; your means of forcing your authority to provide you with sufficient sewers; your rights to empty your drains without the district; and your weapons for combating the obstacles to your doing so which may arise.

When I was requested this second Session by your Hon. Secretary, Mr. A. B. Plummer, of this city (Newcastle), to read a second Paper on "Legal Topics," I willingly consented, but I fear that he hardly expected such a legal inundation. I must therefore apologise for the fact that even in this lengthy lecture I have not been able to deal with the question of duties as to sewers and sanitation generally, a topic which presents a field for inquiry as wide as the subject of sewage rights. Then there must be considered the various local and

adoptive Acts, and the by-laws, which may modify much of the law which I have laid down, for home rule in sanitation and building law is an established principle of the Acts which concern the builder. As the divine Rudyard sings :—

"The wildest dreams of Kew are the facts of Khatmandu,
And the crimes of Clapham chaste in Martaban."

We are therefore only on the fringe of a vast subject. You may, perhaps, find this lecture of use to you when you purpose to build, but I may conclude with the hope that you will not find it necessary to fight for your sewage rights, and that surveyor and Council alike will take a pride in helping you to attain the smiles of Hygeia, and to defy her father Æsculapius, an object more essential to the householder's happiness than even the quaint, the home-like, or the picturesque.

Notes to Part III.

(*s*) *Complaining of insufficient sewers.*—In *Glossop* v. *Heston, L. R.*, 12 Ch. D., p. 118, Lord Esher said: "In my opinion no district can be said to be satisfactorily drained *where any part of the drainage causes a nuisance*" (*i.e.* a public nuisance as explained later on). In *Molloy* v. *Gray* [1889], 24 *L. R.*, Ir., 258, it was held by Pallis, J., who quoted the above, that the authority is bound to see that the sewers shall be fit to carry away any fæces, which would otherwise be likely to create a nuisance in the district. The householder was not, he thought, to be relegated to the dry system because the authority's sewer was unsatisfactory. These cases, however, do not help us, for they only applied to a nuisance created through people draining into a sewer of the authority which had either an unsatisfactory outfall or was in bad repair. In such a case the authority could clearly not have stopped the users of the sewer. I think we must confine "nuisance" as above used to nuisances to which the authority could not object—*i.e.* to nuisances which were really due to their default in sewering the neighbourhood. We therefore learn from the above dicta that the authority should sewer where they ought not to omit to do so. One wishes that all propcsitions of law under this Act were as self-evident. For all this, on the principle mentioned in the next note it is clear that, however isolated a householder, the authority must come to his assistance with a sewer if any other means of draining is a source of danger to the public. The judge in Molloy's case said that he would make allowances in poor neighbourhoods. But one asks, Is poverty a crime to be punished by disease from cheap and nasty sewerage? I presume that the judge meant thinly-populated districts.

(*t*) *Isolated houses and cesspools.*—Another question: Suppose you had an isolated house or houses, and owing to the character of the land and the trend of the underground waters, or to the smallness of your ground, a cesspool would be a danger? I think that if the cesspool threatened typhoid and consequent epidemic you might insist on sewerage accommodation in very many cases, even though the nuisance did not take place in a sewer as in Heston's and Glossop's cases. Though I should not advise you to cover the whole of the site, you could assert your claim to build on a small piece of land just as the householder there was vindicated by the Court in *Molloy* v. *Gray* when she abandoned the dry system. You would then argue on the principle that the public weal is the test of the necessity of sewers, coupled with the self-evident fact that disease to one may lead to disease to many. The pith of the case would be "I can't be made to change. A change is necessary. The Council must make the reform." (See remarks on surveyor's report as to compulsory access.)

(*u*) *Sewers for imported sewage.*—The neighbouring Council, like all Councils, is bound, under section 15, to make sufficient sewers for the drainage of its district. This drainage includes imported sewage. The words of the section clearly bear this interpretation. If a farmer undertakes to drain his field, he could not escape providing drains for the overflow from a neighbour's field. Again, the spirit of the Act forces one to this conclusion; for the object of section 15 is the benefit of the public, and one has yet to learn that imported sewage is any less virulent than the home production. Nor can the foreign Council insist that you keep your sewage within your own borders. Of course, however, necessity and relative expense will be considered. Even if you had only a way-leave for a pipe-line, the landowner who granted it would be a ratepayer, and so this would make it more or less fair that his Council should provide a sewer; and, even if it were not fair, the Council, if urban or urbanised rural, could, with leave from the Local Government Board, declare his land a special drainage district ((*s*) Part I., p. 380).

(*v*) The advertisements and notices, though not specially directed to the neighbouring authority, are intended to bind it (Fitzgerald, "Public Health Act," p. 33).

(*w*) *Authorities and their neighbours' sewers.*—This note may indirectly be of value to the building owner. Can an authority, with leave of the Local Government Board, and subject to agreed or settled terms, insist, as against the neighbouring authority, on connecting, as of absolute right under section 28, with the sewers of the latter? This section should be carefully read before these remarks are perused. The question is a very difficult one; but, on the whole, I think that there is no absolute right. For absolute right there are five arguments which are fairly sound—viz.:—

1. Founded on the words, "in case of dispute to be settled by the Local Government Board." This is an argument *ad absurdum*. It will be unintelligible unless the section is read. "Fancy," it might be said by the absolutist, "fancy an Act which carefully empowers an authority, which, according to the other side, can refuse connections altogether, to make an absurd contract in which the terms were not already provided for, or by which some valuer had not been first appointed to prevent disputes and dissensions, and, instead of first employing a man on the spot in a friendly way, to thus when the milk is spilt call in the cumbrous decision of the Local Government Board in a hostile arbitration to wipe it up!" (See *Collins* v. *Collins*, 28 *L. J.*, Ch. 184.) The answer to this, however, is that Parliament through its mouthpieces, the draughtsmen, occasionally says strange things.

2. Founded on the restriction of "storm-waters." In *Matson* v. *Baird*, 3 A.C., 1084 (bottom) and 1085 (top) it was thought absurd to suppose that the legislature intended in such a manner to make a stipulation in favour of people who could have made it for themselves, since they had the power to refuse to contract at all. It was therefore presumed that the legislature intended the stipulation to be a restriction on *absolute* rights which *did* exist in the other party. Taken with 1, the absolutist's case is all the stronger for the other side. Sanctionists must suppose first that Parliament carefully gives leave to make an idiotic contract, as in argument 1, and then interferes as to storm-waters to enforce prudence. But the same answer may be made as was made to 1.

3. Because there is a *special* provision that "storm-waters" and third Council's sewage are not to be emptied "without consent," which would go to show that other sewage, which is carefully left out of this clause, *might* be poured in without consent.

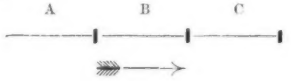
4. The hardship to a hinterland district, if a marine

or riverside district could thus fend it off. Answer: that the former can drain into tanks or into sewage farms.

5. The communication would be a sewage work, and therefore enforceable upon the neighbouring Council under sections 32 to 34, if the Local Government Board so desired. The notices under those sections were intended to bind Councils (*Wimbledon* v. *Croydon*, 32 Ch. D., 421, and Fitzgerald, 33 (and see note *v*)). But it may, on the other hand, be argued that sections 32 to 34 are not permissive, but are prohibitions cumulative on any other restrictions which may exist, and also that sections 32, &c., do not apply to foreign sewers in the home districts.

In answer to the "absolutists" it may be said by the "sanctionists," (i.) "Why is section 28 couched in different language from section 22, which omits the words "by agreement"? This argument cannot be answered unless the Courts will strain themselves to transpose and distort words (see Maxwell, 320, as to eliminating words see p. 329, supplying words, 351, "or" for "and," and "and" for "or," 332). The Courts do sometimes thus distort words. But, to my mind, this first argument settles the question. (But note the useless contrast between sections 21 and 22, mentioned in note *a*.)

(ii.) Again, the sanctionists might say, "The other side argue that one Council cannot refuse another's sewage. Therefore C District must receive B's sewage, and at the same time B must receive A's. This would contradict the last words of the section as to third parties' sewage." (The answer to this argument—and, I think, a fairly good one—is that this would be an exception, not a contradiction, and therefore the proviso might be thus read: "If B receives A's, C may refuse B's. If C receives B's, B may refuse A's.")



(iii.) Hardship. (Answer: That compensation, &c., is given, and therefore there is none.)

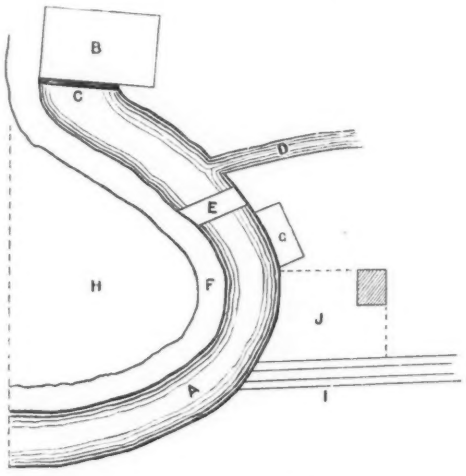
(iv.) Marginal note to section. (Answer: This is not part of the Act.)

(v.) *A.-G.* v. *Acton*. (Answer: Distinguishable, as section 28 was not quoted, and would have been inapplicable, since the Local Government Board had never sanctioned.)

I must apologise for the length of these arguments. I feel that perhaps I am propounding rather than solving the problem. Note that even where there is no compulsion either of intervening owners or of adjoining Council, section 32 at least must be obeyed (*Jones* v. *Conway*). (As to the state of things before this section was law, see *Hayward* v. *Lownds*, 28 *L. J.*, Ch., 400.)

Perhaps a private person having a sewer "for his own profit" might pass his Council's sewage through it, and thus drain for the latter, as of absolute right, under section 22, into the sewers of the neighbouring authority. Such a case would arise where a man had a sewage farm (see "Own Profit," p. 377 *ante*) and drained the effluent across the border. Perhaps the Courts would find a method of brushing aside such an evasion of section 28.

(*x*) *Statutory navigation bodies, sections* 327 *and* 328 (*Excepted Property*). (See Part II.). (All the property set out in plan belongs in some sense to the above bodies.)



Under section 327 (unless consent)—

A, River or Canal. B, Dock, Harbour, Reservoir, or Basin. C, Lock. F, Towing-path.	Subsection 3. Must not interfere with traffic.
D, Watercourse feeding river.	Subsection 4. Must not affect quantity or quality.
E, Bridge. B, Dock, Harbour, Reservoir, or Basin. G, Wharf or Quay.	Subsections 5 and 6. Must not interfere in any way, *i.e.* touch at all. (See text.)

Under section 328 —

H, Land required for improving, *e.g.* straightening. I, Works, *e.g.* a railway (not being on wharf). J, Convenient Land, *e.g.* contains employé's house.	Arbitrator can forbid if real incompensable damage.

(*y*) *Local Government Board, s.* 299. *Ultra Vires.*—If the authority carry out properly a recognised system of sewage disposal, the Board cannot impose some other upon them (see report of the Manchester and Leeds Commission, just held).

ADDENDA AND CORRIGENDA TO PART I. [p. 369].

P. 369, *after* "taboo" refer to note (*u*) at end of addenda, and put commas after "field" and "ditch."

P. 372, col. 1, l. 12, *after* "Lumley holds that the conduit would not be a 'drain,'" *add* "under s. 4, but seems to think that being a drain in the popular sense it would be under s. 21. Against this view the reasoning which follows falls harmless. And on line 26 read "it" for "you" in "you will either be forced."

P. 372, col. 2, l. 13, put asterisk *after* "local authority under this Act," and at bottom of page put "See case as to Dr. Wroughton and Messrs. Platt & Hendry reported in the *Carlisle Patriot*, 14 June 1901. The Local Government Board can prevent a road from coming under the authority of a rural district council. Remember that the drain owner cannot empty sewage into the authority's road drain."

P. 375, col. 2, top, "this adjunct" *not* "his adjunct."

" " l. 20, "degrees of potency" *not* "degree."

P. 376, col. 1, l. 11, "long leaseholds" for "a long leasehold."

P. 376, col. 1, bottom, *after* "that pipe becomes a sewer," *add*

"Under the source test we may consider the question whether a sewer needs a building. The answer is undoubtedly no, whatever we may think regarding the analogous question as to a drain.

We may also ask, if the absence of a building will make the conduit from one set of open premises a sewer, *e.g.* the trenches or nicks in the concrete of an open cattleyard. My opinion (*d*) is that such are drains, but if they are not, then they are sewers.

Drains from authority's roads are sewers but are not under s. 21, and drains cannot be emptied into them.

P. 376, col. 2, l. 2, insert "of Meader's" between "several" and "houses."

P. 379, end of (*c*), after "of doing it," should read "On the other hand, the client could sue the architect if he had been negligent in performing his contractual duties. An architect is not a legal adviser, and his duty, if matters were left to him, would be in cases of doubt to consult a solicitor at the owner's expense."

P. 379, as to (*d*).

It has been suggested (1) that the words "premises within the same curtilage" are to be taken to mean premises *ejusdem generis* with "one building only." This would frustrate the object of the Act, as it would exclude yards and yard sinks.

(2) That "same" means "same as the one building," and not "one" or "same as each other." In this case, however, an open cattleyard could not drain, and its very floor would vest in and be cleanseable by the authority as being "sewers"! (There are no special provisions as to draining cattleyards or markets.) Again, this contention would have made Rigby, J., right in the Shoreditch case. For he took this view and argued that, "the premises" being "within the same curtilage" as *more than* "one building only," *i.e.* as two blocks, the definition was not satisfied. His reasoning was sound if interpretation (2) is correct, and yet he was wrong. Further, "same," when in an adverbial phrase, refers to the nearest antecedent. See Stroud's journal, *sub* "same," Coke on Littleton ("eadem forma"). Lastly, the Imperial and other dictionaries show that "the same" primarily means "one" rather than "that."

(3) That "premises" in itself means "appurtenances to a building." The cases in Stroud *sub* "premises" do not, if carefully considered, favour this view. We must be content with the statutory and the more primary popular meaning.

P. 379, (*e*) top, *after* "before August 1876" *add* "and did not also empty directly into sea or tidal river."

P. 379, *after* "In the case of old drains which poured" *add* "or were at that date being constructed to pour."

P. 379, at end of note, *add* "'Tidal river' does not include the fresh waters dammed up by abnormal tides. *Reece* v. *Miller*, 8 Q.B.D. 626. Otherwise nuisance would occur for most of the year."

P. 380, (*n*) add at end "As to sewering a college, see s. 335, which may perhaps apply."

P. 380, (*o*) add at end before full stop, "which is held rent free from the employer."

P. 380, (*r*) last line, 37 *not* 1837.

„ (*s*) l. 10, *for* "excusing him," *read* "excusing the owner of such premises."

P. 380, l. 13, *for* "builder . . . two or more" *read* "owner of one of two or more."

P. 380, (*t*) last par., instead of "for before you connected" *read* "for at the exact moment you poured your drainage through the connection," and *after* "apply" *add* "and when you had done so, the connection had already for some time been made at the fork of the conduits."

P. 380, (*u*) add a note (*u*) to Part I.

River Fisheries. Whether the stream is tidal or otherwise, the Salmon Fishery Act of 1861, s. 5 may have to be reckoned with. If the sewage is of sufficient amount to "poison fish" (salmon, I presume) in waters where salmon are found or in their tributaries, the drain owner will be liable to fine. He can plead (1) prescription. (2) "Best practicable means of purifying within a reasonable cost" (s. 6). He cannot plead (1) "sewage not poured directly into such waters or tributary" if fish killed there. (*Merrick* v. *Cadwallader*, 51 L. J. M. C. 20; *Harbottle* v. *Terry*, 10 Q.B.D. 131, the Whittle Dene Case are not in point). Nor (2) "sewage insufficient of itself to poison without the sewage of others." Nor (3) "place where fish poisoned not within fishery district." The Act is clear.

The Board of Trade is the guardian of fisheries, but anyone can prosecute.

Sea Fisheries. As to pouring into the sea, the Fisheries Committee have, under the Sea Fisheries Act, 1888, s. 2, power to restrict sewage by by-laws, if confirmed by the Board of Trade.

Sewage can either poison fish or feed plants; can make a stream hideous or enhance the beauty of a pasture; can help the earth to nourish man or can decimate him with pestilence. Victor Hugo calculated that Paris pours every year many *milliards* of *francs* into the Seine! One wishes one could find more statutes protecting our rivers, and that the persons commissioned to prevent the foul and wasteful habit of polluting streams would do their duty, or could be goaded into doing it by some influential society for the prevention of pollution of streams. Whether the proposed central control will avail remains to be seen. Government offices sometimes sleep.

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